UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC.	:	
	:	Case No. 01-CA-263985
versus	:	
INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS LOCAL R1-999, NAGE / SEIU LOCAL 5000	:	

RESPONDENT'S POST-HEARING BRIEF

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As the Respondent in the above-captioned case, American Medical Response of Connecticut, Inc. (hereafter, "AMR" or the "Company") hereby submits, by and through the Undersigned Counsel, this Post-Hearing Brief to Your Honor.

BACKGROUND

The Unfair Labor Practice Charge (hereafter, the "Charge") in the case now before Your Honor was filed on August 3, 2020 by the International Association of EMTs and Paramedics, Local R1-999, NAGE / SEIU Local 5000 (hereafter, the "Union"). See GC Exh. 1(a). On October 15, 2020, the General Counsel, acting through the Acting Regional Director for Region 1 of the National Labor Relations Board (hereafter, the "Board), issued a Complaint (hereafter, the "Complaint") by which he adopted the allegations encompassed by the Charge and, as explained below, picked up another allegation *sua sponte*. See GC Exh. 1(c). Put simply, the Complaint alleges that AMR violated Section 8(a)(5), and derivatively, Section 8(a)(1) of the National Labor Relations Act, as amended (hereafter, the "Act"), on account of the Company's alleged failure or refusal to provide the Union with information and documentation that was requested by the Union on various dates between May and July of 2020. Id., ¶¶ 9 – 13.

In response to the Complaint, on October 29, 2020, AMR filed a timely Answer through which the Company denied the material allegations of the

Complaint. See GC Exh. 1(e). AMR later filed an Amended Answer, whereby the Company averred a number of Affirmative Defenses. See GC Exh. 1(f).[1] The hearing on the Complaint took place virtually, *via* Zoom, on January 19, 20 and 26, 2021.

SUMMARY OF THE EVIDENCE

1.) Background

AMR is the leading provider of medical transportation services in the State of Connecticut. The Company has four (4) Divisions, namely Bridgeport, Hartford, New Haven and Waterbury. See Tr. 40. The Bridgeport and New Haven Divisions are managed by William Schietinger, the Company's Regional Director for Connecticut South, who assumed the position in roughly August of 2019. See Tr. 286.

The majority of the Company's workforce is comprised of Emergency Medical Technicians (hereafter, "EMTs") and Paramedics. The EMTs and Paramedics assigned to the New Haven Division are represented by the Union. The terms and conditions of employment for these employees (hereafter, at times, the "represented employees") are set forth by a Collective Bargaining Agreement

[1] Currently pending before Your Honor is AMR's Motion for Leave to File a Second Amended Answer, whereby the Company seeks to add an Affirmative Defense based upon the removal of Peter Robb as the agency's General Counsel and other, related events that were taking place more or less contemporaneously while the hearing was in session before Your Honor.

(hereafter, the "Agreement") that took effect on January 1, 2019 and is scheduled to expire on December 31, 2021. See GC Exh. 1. Nate Smith is the Union's assigned representative for the EMTs and Paramedics working out of the Company's New Haven Division, and for roughly the last six years, EMT Michael Montanaro has served as the Union's President. See Tr. 37 – 38 (Smith), Tr. 168 (Montanaro).

2.) The 2019 Grievance

On or about October 14, 2019, the Union filed a Grievance (hereafter, at times, the "2019 Grievance") against the Company. See GC Exh. 3, Tr. 43 – 44 (Smith). The Grievance was prompted by an increase in the number of employees from the Bridgeport Division (hereafter, the "Bridgeport employees" or the "Bridgeport crews") performing work in the locales serviced by the New Haven Division (hereafter, for ease of reference, "New Haven"). See Tr. 175 (Montanaro). The Grievance styled the Company's use of Bridgeport crews to perform New Haven work as a form of "subcontracting" that allegedly violated Article 4.02 of the Agreement. See GC Exh. 3. Schietinger believed the Grievance was based upon the Union's assumption that the Company was prescheduling Bridgeport employees for work in New Haven. See Tr. 331 – 332.

The Grievance was processed by the Company, and ultimately, the parties convened a meeting to discuss the Union's allegations. For the Company, the

meeting was attended by Schietinger together with Tim Craven, the Company's Operations Manager for New Haven. For the Union, the meeting was attended by Smith and Montanaro as well as the Union's attorney, Doug Hall. See Tr. 47 (Smith), Tr. 174 – 176 (Montanaro), Tr. 288 – 289 (Schietinger). The witnesses who appeared before Your Honor essentially agreed as to the substance of the parties' discussion. The Union contended that Bridgeport employees were performing work in New Haven and requested an explanation. See Tr. 176 – 177 (Montanaro). In response, Schietinger represented that Bridgeport employees were performing work in New Haven only for the purpose of "mutual aid."[2] Id., Tr. 307 (Schietinger). Schietinger also represented that the Company had no intention to preschedule Bridgeport employees to work in New Haven, but at the same time, made clear that Bridgeport employees would continue to perform work in New Haven to the extent necessary for mutual aid. See Tr. 47 (Smith), Tr. 179 (Montanaro), Tr. 288 (Schietinger). All of the witnesses agreed that, upon the conclusion of the parties' discussion, a resolution had been achieved and the Grievance was deemed closed. See Tr. 47, 50 (Smith), Tr. 179 (Montanaro), Tr. 288 (Schietinger).

[2] "Mutual aid" refers to a set of circumstances in which the emergency response needs for a given locale exceed the emergency response resources possessed by the locale and the further resources necessary to meet these higher needs originate from an outside source. See Tr. 49 (Smith).

3.) AMR's "Disaster" Notice of March 16, 2020

On March 16, 2020, as the presence and grim effect of COVID-19 became clear to the world, AMR provided the Union with written notice of the Company's invocation of Article 23.03 of the Agreement (see GC Exh. 1, page 45), which addresses – and substantially expands – the Company's rights in circumstances where normal operations are disrupted by an event outside of the Company's control. See R. Exh. 4, pages 8 – 9; see also Tr. 248 – 250 (Nupp), Tr. 298 – 299 (Schietinger). The notice observed that, by virtue of Article 23.03, the Company "would be temporarily relieved of obligations under the [Agreement] relating to certain matters including scheduling and shifts changes." See R. Exh. 4, page 8. The notice also observed that AMR would now be authorized "to modify work schedules, work times and other daily working conditions . . ." Id., page 9. The Union acknowledge receipt of the notice and the record does not include any evidence that the Union expressed any disagreement with AMR's statement of its rights under Article 23.03. See generally R. Exh. 4.

4.) Late April / Early May 2020 Interactions Between Montanaro and Schietinger

According to his testimony, in April 2020, Montanaro observed an increase in the number of Bridgeport crews appearing in New Haven. See Tr. 180 – 181. Montanaro also recalled hearing "radio chatter" in which Bridgeport crews essentially communicated that they were performing work, or would be performing

work, in New Haven. See Tr. 184-185. Around the same period of time, according to Montanaro, represented employees began to complain to him about so-called "brown outs."[3] See Tr. 187 – 188.

On May 2, 2020, Montanaro sent an e-mail to Schietinger. See GC Exh. 7, see also Tr. 55 – 56 (Smith), 188 – 189 (Montanaro). In the e-mail, Montanaro essentially requested that seniority govern the removal of represented employees from the schedule. Montanaro also contended that the schedule changes had resulted in "holdovers."[4] Though a Saturday, Schietinger immediately responded to Montanaro's e-mail. See GC Exh. 7. In doing so, Schietinger explained the Company would soon be restoring hours to the schedule and offered to meet with the Union as soon as Monday to discuss any ideas the Union wished to offer. Id.

On May 4, 2020, Montanaro sent another e-mail to Schietinger. See GC Exh. 8, see also Tr. 60 (Smith), Tr. 191 (Montanaro). In the e-mail, Montanaro stated he observed a number of employees removed from the schedule and heard dispatchers assigning Bridgeport employees to New Haven "to assist with the over abundance of calls that New Haven [was] facing." Schietinger immediately investigated Montanaro's concerns (see Tr. 291 – 292), and only thirty minutes

[3] "Brown out" refers to the removal of works hours, typically an entire shift, from the work schedule. See Tr. 54 (Smith), Tr. 171 (Montanaro), Tr. 339 – 341 (Schietinger).

[4] "Holdover" refers to occasions on which employees are required to work beyond the scheduled end of their workday. See Tr. 339 (Schietinger).

later, advised that between thirty to forty hours would be returned to the schedule each day that week. As for Bridgeport employees working in New Haven, Schietinger confirmed there was a single Bridgeport crew in New Haven that day. However, the Company had not prescheduled the crew for work in New Haven. See Tr. 292 – 293 (Schietinger). Instead, as explained by Schietinger's response, the Bridgeport employees were in New Haven to drop off a patient and, due to a spike in volume that was taking place at the time, the Company asked the same employees to pick up a patient at the same facility. See GC Exh. 8.

According to Montanaro, on or about May 6, 2020, he and Schietinger had a conversation in Schietinger's office. See Tr. 192 – 193 (Montanaro). Montanaro stated, "I heard there was about 1,000 hours cut off the schedule" and requested an explanation. Schietinger obliged, explaining the Company's volumes had been affected by the virus outbreak. Montanaro then stated that holdovers were taking place. In response, Schietinger stated he would undertake best efforts for employees to be relieved of duty at the scheduled end of their shifts. Lastly, Montanaro raised Bridgeport crews being located in New Haven, whereupon, here as well, Schietinger stated he would undertake best efforts not to preschedule Bridgeport employees for New Haven work. Id.[5]

[5] Schietinger, for his part, had no precise recollection of the meeting described by Montanaro. However, Schietinger did recall that, around May 2020, he had a conversation related to brown outs with Montanaro or Smith. In particular,

Following the meeting with Schietinger, Montanaro "contacted [Smith] to let him know that [he] spoke to [Schietinger] about everything. [He] explained to [Smith] what happened and [Smith] kind of took it from there." See Tr. 194 – 195 (Montanaro). The record does not include any evidence as to why Montanaro contacted Smith or what action, if any, Montanaro was seeking Smith to pursue on behalf of the represented employees.

5.) Early May 2020 Phone Call Between Smith and Schietinger

On or about May 6, 2020, Smith contacted Schietinger by phone. See Tr. 63, 66 (Smith). According to Smith's testimony, he informed Schietinger of represented employees' reports that brown outs were not being determined on the basis of seniority, which Schietinger confirmed to be accurate. Smith then informed Schietinger of represented employees' concerns as to Bridgeport employees performing New Haven work. In response, Schietinger stated that Bridgeport employees were performing New Haven work only to the extent necessary for mutual aid. The phone call came to an end with Smith advising that the Union would send an information request to the Company. Id., see also fn. 5, *supra*.

Schietinger recalled that he informed Montanaro or Smith that the Company was not following seniority in connection with the brown outs, but rather, relying upon the flexibility afforded by the Company's disaster rights under the Agreement. See 296 – 298.

6.) The Union's May 7, 2020 Information Request

On May 7, 2020, *via* a letter signed by Smith and addressed to Schietinger, the Union submitted an information request to the Company (hereafter, at times, the "May request"). GC Exh. 9, see also Tr. 67 (Smith). Smith's letter stated the information request was submitted due to the Union's "concerns" related to a reduction in represented employees' shifts, but he did not mention any Article of the Agreement that was implicated as part of these concerns. In relevant part, the Union requested the following information / documentation:

> Paragraph (1): List of all bargaining unit members who have been removed from the schedule since March 1, 2020.
>
> Paragraph (2): List of all shifts removed from the schedule since March 1, 2020.
>
> Paragraph (3): Data of call volume since March 1, 2020.
>
> Paragraph (4): Number of calls responded to by non AMR New Haven bargaining unit members in the New Haven coverage area since March 1, 2020.

On May 18, 2020, Smith sent an e-mail to Schietinger in which he noted the Union had not yet received a response to the May request. GC Exh. 10, see also Tr. 67 – 68 (Smith). The very next day, Schietinger informed Smith that the Company's Labor Relations Manager, Aaron Nupp, would be responding on the Company's behalf and invited Smith to contact him (*i.e.*, Schietinger) with any questions. GC Exh. 11, see also Tr. 68 – 69 (Smith).

A day or two later, Smith received a phone call from Nupp. See Tr. 73 (Smith). Nupp explained the purpose of the call was to seek clarification with respect to Paragraph (2) of the May request, *i.e.*, the list of all shifts removed from the schedule. See Tr. 243 – 244 (Nupp). Smith and Nupp offered substantially the same testimony in terms of the substance of their conversation. Nupp explained the documents responsive to Paragraph (2) were voluminous and Smith agreed to accept only those documents that showed the brown outs. See Tr. 74 (Smith), Tr. 244 – 245 (Nupp). Though neither witness offered testimony about any conversation related to a timetable for the production, according to Smith, as their conversation neared a conclusion, Nupp also made a comment to the effect "some were making it difficult for him to get some of the information to [him]." See Tr. 77.

7.) The Company's June 7, 2020 Response

On June 7, 2020, *via* a letter signed by Nupp and addressed to Smith, the Company responded to the May request (hereafter, at times, the "June response"). See GC Exh. 12, Tr. 78 (Smith). In relevant part, the Company raised the following objections to the following Paragraphs:

> Paragraph (1): **List of all bargaining unit members who have been removed from [*sic*] March 1, 2020.** The Employer objects to the Union's request as it is overly broad. Should the Union wish to revise its request to indicate the specific reason(s) the employee(s) had hours reduced or removed from

the schedule, the Employer may consider the revised request.

Paragraph (3): **Data of call volume since March 1, 2020.** The Employer objects to the Union's request as it is overly broad, lack a basis of relevance, and is proprietary in nature and is outside the Union's jurisdiction and the collective bargaining relationship.

Paragraph (4): **Number of calls responded to by non-AMR New Haven bargaining unit members in the New Haven coverage area since March 1, 2020.** The Employer objects to the Union's request as any information pertaining to non-bargaining unit employees is outside the Union's jurisdiction and the collective bargaining relationship.

The Company's response was accompanied by the brown out schedules that Smith and Nupp had discussed in connection with Paragraph (2) of the May request. See GC Exh. 12(a) – 12(c), Tr. 78 – 79 (Smith), Tr. 259 (Nupp). Though Smith informed Schietinger during their above-referenced phone call that the Union would share the Company's responses with represented employees, Smith had no recollection of sharing the brown out schedules with any of the employees, including but not limited to Montanaro. See Tr. 124 (Smith).

8.) The Union's June 10, 2020 Information Request

On June 10, 2020, *via* a letter signed by Smith and addressed to Nupp, the Union submitted to the Company what Smith described as a "clarified" information request (hereafter, at times, the "June 10 request"). See GC Exh. 13,

see also Tr. 83 (Smith). In connection with Paragraphs (1), (3) and (4) of the May request, Smith made the following statements:

> Paragraph (1): **List of bargaining unit members who have been removed from the schedule from March 1, 2020.** I am asking for the list the Company used, by seniority of the members who were impacted by the "brown outs" as per CBA, Article 9, Section 9.03.
>
> Paragraph (3): **Data of call volume since March 1, 2020.** The information is relevant to the ongoing union investigation into non-bargaining unit AMR employees performing bargaining unit work in the New Haven coverage area on a frequent basis during the brown outs.
>
> Paragraph (4): **Number of calls responded to by non-AMR New Have Bargaining Unit members in the New Haven AMR coverage area since March 1, 2020.** See number 3.

Smith's testimony was that Paragraph (1) of the June 10 request and Paragraph (1) of the May request targeted the very same information. See Tr. 136 – 137. Nupp, on the other hand, testified that he understood Paragraph (1) of the June 10 request and Paragraph (1) of the May request to be seeking different information. See Tr. 245 – 247.

As part of the June 10 request, Smith also expressed an intention to contact Schietinger, as Nupp had previously invited (see GC Exh. 12, Paragraph 5), for a further discussion related to the brown outs. However, the record does not include

any evidence that Smith took advantage of the opportunity and actually contacted Schietinger.

9.) The Union's June 15, 2020 Information Request

On June 15, 2020, *via* a letter signed by Smith and addressed to Schietinger, the Union submitted what Smith described as a "new" information request to the Company (hereafter, at times, the "June 15 request"). See GC Exh. 14, see also Tr. 83 – 84 (Smith). Smith's letter stated the June 15 request was submitted "[a]s the [Union] continue[d] to look into concerns over staffing and the brown outs." In relevant part, the Union requested the following documentation:

> Paragraph (2): Documentation detailing the AMR New Haven response times for the period of May 1, 2020 through todays date.

10.) The 2020 Grievance

On July 8, 2020, the Union filed a Grievance (hereafter, at times, the "2020 Grievance") against the Company. See GC Exh. 16, Tr. 85 – 86 (Smith). Though the allegation was not phrased in precisely the same way, according to the testimony offered by both Smith and Montanaro, the violation alleged by the 2020 Grievance was essentially the very same allegation previously alleged by the 2019 Grievance. See Tr. 121, 145 – 146 (Smith), Tr. 209 (Montanaro). The Grievance was denied by the Company at each step of the grievance process and ultimately

advanced to arbitration by the Union. See GC Exhs. 17, 19, 22, 23, 25, see also Tr. 86, 88 – 89, 92 – 94 (Smith).

11.) The Company's July 17, 2020 Response

On July 17, 2020, *via* a letter signed by Nupp and addressed to Smith, the Company responded to the pending information requests (hereafter, at times, the "July 17 response"). See GC Exh. 20. In relevant part, the Company offered the following responses and objections to the following Paragraphs:

> Paragraph (1): **List of all bargaining unit members who have been removed from [*sic*] March 1, 2020. I am asking for the list the Company used, by seniority of the members who were impacted by the "brown outs" as per CBA, Article 9, Section 9.03.** The Employer has no responsive information regarding a seniority list for "brown outs." Hours reduced or removed from the schedule were based on the Employers determination of need and its rights as defined in Article 4, Section 4.01 of the [Agreement]. Additionally, the Union was provided notice on 3/16/20 that the Employer was temporarily invoking the local and national disaster provisions of the [Agreement] due to the COVID 19 Crisis which temporarily relieves the Employer of obligations under the [Agreement] relating to certain matters including scheduling and shift changes.
>
> Paragraph (2): **Data of call volume since March 1, 2020. The information is relevant to the ongoing union investigation into non-bargaining unit AMR employees performing bargaining unit work in New Haven coverage ara [*sic*] on a frequent basis during continued brown outs.** The Employer renews its objection to the Union's request as it is

overly broad, lacks a basis of relevance, and is proprietary in nature and is outside the Union's jurisdiction and the collective bargaining relationship.

Paragraph (3): **Number of calls responded to by non-AMR New Haven bargaining unit members in the New Haven AMR coverage area since March 1, 2020. See number 3.** The Employer renews its objection to the Union's request as it has a right to allocate and / or reallocate Company resources and to " . . . take such measures as it may determine to be necessary for an orderly operation of the business." Additionally, any information pertaining to non-bargaining unit AMR employees is outside the Union's jurisdiction and the collective bargaining relationship.

Paragraph (5): **Documentation detailing the AMR New Haven response times for the period of May 1, 2020 through June 15, 2020.** The Employer objects to the Union's request as it is overly broad, lack a basis of relevance, and is outside the Union's jurisdiction and the collective bargaining relationship.

In connection with Paragraph (1) of the July 17 response, Smith interpreted Nupp's statement as an indication that the responsive information existed but the Company was refusing to provide the information. See Tr. 139 – 140. In fact, Nupp intended to convey (and, as argued below, did convey) that the Company did not possess the requested information. See Tr. 247 – 248 (Nupp).

12.) The Union's July 22, 2020 Information Request

On July 22, 2020, *via* a letter signed by Smith and addressed to Nupp, the Union submitted what Smith described as yet another "new" information request to

the Company (hereafter, at times, the "July 22 request"). See GC Exh. 21, Tr. 91 (Smith). Smith explained he viewed the July 22 request as a new request, because, whereas the previous requests were related to "concerns," the July 22 request was the result of the 2020 Grievance. See Tr. 91. The Union requested the following information and documentation:

Paragraph (1):	List of employees affected by the "brown out" since March 1, 2020
Paragraph (2):	Data of AMR New Haven call volume since March 1, 2020
Paragraph (3):	Number of calls responded to in the New Haven service area by non-bargaining unit employees.
Paragraph (4):	AMR New Haven's response time policy / procedure / standard operating guidelines.
Paragraph (5):	Detailed log of response times for AMR New Haven for a time period of May 1, 2020 through present.

In terms of Paragraph (1), Smith testified that, though worded differently, the Paragraph sought the very same information as Paragraph 1 from the May request and Paragraph 1 from the June 10 request. See Tr. 148 – 149. Nupp, by contrast, testified that he understood Paragraph (1) of the July 22 request to be a new request. See Tr. 252 – 253.

13.) The Company's July 29, 2020 Response

On July 29, 2020, *via* a letter signed by Nupp and addressed to Smith, the Company responded to the July 22 request (hereafter, at times, the "July 29 response"). See GC Exh. 24, Tr. 93 (Smith). Specifically, the Company offered the following responses and objections:

Paragraph (1): **List of all employees affected by the "brown out" since March 1, 2020.** The Employer objects to the Union's request as it is overly broad and subjective in nature.

Paragraph (2): **Data of AMR New Haven call volume since March 1, 2020.** The Employer has already provided a response to this request in its letters dated 6/7/2020, and 7/17/2020.

Paragraph (3): **Number of calls responded to in the New Haven service area by non-bargaining unit employees.** The Employer has already provided a response to the same or similar request in its letter dated 7/17/2020.

Paragraph (4): **AMR New Haven's response time policy / procedure / standard operating guidelines.** The Employer has no responsive information regarding response time policy / procedures / standard operating guidelines for AMR New Haven.

Paragraph (5): **Detailed log of response times for AMR New Haven for a time period of May 1, 2020 through present.** The Employer has already provided a response to the same or similar request in its letter dated 7/17/2020.

In connection with Paragraph (4) of the July 29 response, as was the case with Paragraph (1) of the July 17 response, Smith understood Nupp's statement as an indication that the responsive document existed, but the Company was refusing to produce the document. See Tr. 152 – 153. Nupp explained that he intended to convey (and, as also argued below, did convey) that the Company did not possess the requested policy. See Tr. 253 – 254.

A few days after receipt of the Company's July 29 response, specifically, on August 3, 2020, the Union filed the Charge and the litigation now before Your Honor ensued. See Tr. 149 – 150 (Smith).

ARGUMENT

1.) The Acting General Counsel Lacks the Lawful Authority to Prosecute the Complaint

As Your Honor is aware, President Biden removed Peter Robb as the agency's General Counsel on January 20, 2021, which was well before the scheduled end of Robb's term of service. Section 3(d) of the Act contemplates a four-year term for anyone who serves as the agency's General Counsel and does not include any language that authorizes the President to remove the holder of the position before the scheduled end of his or her term. Accordingly, the removal of Robb as the agency's General Counsel was unlawful, and consequently, Peter Ohr, the agency's current Acting General Counsel, lacks the authority to prosecute the Complaint now before Your Honor.

2.) Alternatively, the Complaint Should be Dismissed on the Merits

A labor organization has, of course, a right to seek from an employer any information that may be necessary for the organization to advocate for represented employees. See NLRB v. Acme Industrial Co., 385 U.S. 432, 435 – 438 (1967). Notably, however, these rights are far from absolute. In the case of subjects that directly touch upon represented employees' terms and conditions of employment, the law presumes that any information related to these subjects is of relevance, but the presumption may be rebutted by the employer. See NP Palace, LLC, 368 NLRB No. 148, slip op. at 4 (2019).

In the case of subjects that are not directly related to represented employees' terms and conditions of employment, by contrast, the law makes no presumption of relevance. See Disneyland Park, 350 NLRB 1256, 1257 (2007). Instead, the labor organization holds the burden to prove the relevance of the requested information and may not rely upon suspicion or any general declaration of relevance to satisfy the burden. See G4S Secure Solutions (USA), 369 NLRB No. 7, slip op. at 2 (2020). Specifically, the labor organization must prove a reasonable belief, based upon objective evidence, that the requested information is relevant, or alternatively, the organization must prove the relevance of the information should

have been apparent to the employer under the circumstances. See Disneyland Park, 350 NLRB at 1258.[6]

As explained below, for those requests that seek presumptively relevant information, AMR rebutted the presumption of relevance or otherwise demonstrated that no violation of the Act took place. Additionally, for those requests that do not seek presumptively relevant information, the General Counsel failed to prove the relevance of the information. Alternatively, assuming *arguendo* the General Counsel somehow managed to prove relevance, AMR established a lawful basis for declining to provide the information.

A.) The July 22 Request for the Company's Response Time Policy

The General Counsel contends that AMR has failed and refused to provide the Union with the Company's "response time policy / procedure / standard operating guidelines" (hereafter, for ease of reference, the "policy"). See GC Exh. 1(c), ¶¶ 11(b), 13(c); GC Exh. 21. However, as noted by the Company's July 29 response, and as demonstrated by the evidence adduced before Your Honor, the policy simply does not exist.

[6] AMR respectfully reserves the right to argue that the duty to provide information should not be triggered based upon a theory that the relevance of the information should have been apparent under the circumstances. See McLaren Macomb, 369 NLRB No. 73, fn. 1 (2020).

The July 29 response states AMR ***"has no responsive information regarding [the policy]."*** See GC Exh. 24 (emphasis added). Smith testified that he interpreted the response to mean the Company possessed the policy but, for some undisclosed reason, the Company was opposed to producing the document (see Tr. 152 – 153), which was clearly an unreasonable interpretation given the plain language of the response. Moreover, Smith apparently did not consider the Company's response in any larger context, which is unfortunate. In response to a number of the Union's other requests, where the Company possessed the responsive information, AMR conveyed the unwillingness to produce the information by interposing objections. See *e.g.*, GC Exh. 24, Paragraph 1. Thus, had he taken a few steps back and considered AMR's overall responses to the Union's requests, Smith likely would have connected with the clear and unmistakable message conveyed by the Company's response.

In any event, regardless of Smith's interpretation of the request, the General Counsel presented no evidence as to the existence of the policy. To be sure, Smith testified that he "believes" the Company possesses the policy, but conceded he lacks any personal knowledge of the actual existence of the policy. See Tr. 153. Nor did Montanaro offer any testimony that suggests the Company possesses the policy. Montanaro described instructions he received on response times, but did not indicate whether these instructions were memorialized in any document, and

more importantly, made clear he received the instructions around the time of his hire, which was twenty-six years ago. See 196 – 198.

As part of sworn testimony before Your Honor, Schietinger expressly confirmed the non-existence of the policy. See Tr. 304 – 305, 327 – 328. The record does not provide any reason to believe that Schietinger's testimony is unreliable. Again, in the case of any document the Company was unwilling to produce to the Union, the Company did not feign the non-existence of the document. Instead, the Company interposed objections and, in the case of documents that included sensitive information, such as call volume, the Company objected on the grounds of confidentiality. See GC Exh. 12, Paragraph 3. To the extent the Company had any concerns with the production of any policy that actually existed, surely the Company would have followed the same approach by expressing the concerns and interposing any applicable objection(s).

In spite of Smith's testimony, the record suggests the Union not only understood the Company's response but also did not question the accuracy of AMR's representation that the policy did not exist. Specifically, during the investigation of the Charge, the General Counsel provided the Company with a summary of the Union's allegations, and notably absent from the summary was any allegation the Company unlawfully failed or refused to produce the policy. See R. Exh. 5, page 2. Nevertheless, the General Counsel raised the allegation *sua*

sponte and apparently hopes to will the policy into existence by asking Your Honor to take judicial notice of various laws that suggest the policy must exist. While the General Counsel's office may enjoy chasing its own tail on the existence of the policy, AMR prefers to rely on evidence and logic. The simple fact of the matter is that the policy does not exist, which was the representation made to the Union at the time the policy was requested, the representation made to Your Honor during the hearing and would continue to be the representation in any future proceedings.

B.) Paragraphs (1) of the May Request, the June 10 Request and the July 22 Request

Contrary to Smith's testimony (see Tr. 136 – 137, 148 – 149), Paragraph (1) of the May request, Paragraph (1) of the June 10 request and Paragraph (1) of the July 22 request are hardly one in the same in terms of the information sought by the Union. Through Paragraph (1) of the May request, which sought the identity of represented employees removed from the schedule (see GC Exh. 9), the Union was focused on the results of a Company decision. Through Paragraph (1) of the June 10 request, which sought "the list the Company used, by seniority . . ." (see GC Exh. 13), the Union was now seeking a document that was used during the course of a Company decision-making process. Paragraph (1) of the July 22 request also had an identity of its own. Here, Smith requested that the Company identify represented employees "affected by" the brown outs (see GC Exh. 21), which, as explained below, would be more than simply those employees removed from the

schedule. In summary, whatever Smith's unspoken intentions may or may not have been, Nupp reasonably understood Smith's correspondence to set forth separate requests (see Tr. 252 – 253), and therefore, reasonably responded to the requests one by one.

(1) The May Request

AMR concedes Paragraph (1) of the May request was presumptively relevant, but at the very same time, the General Counsel and the Union must concede that Smith effectively acknowledged the validity of the objection the Company raised in response to Paragraph (1), namely the fact the request was overly broad. See GC Exh. 12. Specifically, Smith acknowledged that, at the time the May request was submitted to the Company, the Union had no concerns as to, for example, employees choosing to be removed from the schedule, but acknowledged the request would nonetheless call upon AMR to identify such employees. See Tr. 130 – 131. Moreover, even though the Company's objection was valid according to the General Counsel's own witness, the record shows the Company was not singularly focused upon the objection. Indeed, AMR took an affirmative step toward a resolution, as Nupp made clear that the Company would consider a revised request whereby the Union would seek the identity of employees removed from the schedule for a specific reason. See GC Exh. 12.

(2) The June 10 Request

For whatever the reason, the Union did not revise the May request. Instead, as explained above, the Union presented AMR with a new request, whereby the Union now sought a seniority list that, the Union apparently believed, the Company had used to effectuate the brown outs. See GC Exh. 13. As explained by the July 17 response, however, the Company never relied on seniority to determine who would be removed from the schedule, and so, the Company had no responsive document to provide to the Union. See GC Exh. 20, Tr. 247 - 248 (Nupp). AMR's response hardly should have come as any surprise to Smith. According to Smith's own testimony, before he submitted the June 10 request, represented employees had complained about being removed from the schedule regardless of their seniority, and during a phone call on or about May 6, 2020, Schietinger expressly "confirm[ed] to [him] that they were not following the seniority" for brown outs. See Tr. 63, 66; see also Tr. 296 – 298 (Schietinger).

Incidentally, the record also shows that Schietinger provided the Union with an explanation as to why the brown outs were not taking place on the basis of seniority. In particular, Schietinger referred the Union to AMR's "Disaster" Notice of March 16, 2020, which authorized the Company to schedule employees free and clear of the restrictions that would apply in more ordinary times. See Tr. 296 – 297 (Schietinger).

In summary, the Union had no basis for Paragraph (1) of the June 10 request. Before the June 10 request was submitted to the Company, there was no dispute in terms of the fact the brown outs were not taking place on the basis of seniority. Likewise, the Union never contended that the Company's disregard of seniority in connection with the brown outs violated the Agreement or was otherwise wrongful under the exigent circumstances.

(3) The July 22 Request

Following the June 10 request, as explained above, the Union once more switched gears. Through the July 22 request, the Union now asked the Company to identify represented employees "affected by" the brown outs. See GC Exh. 21. Clearly, the Union's request was overly broad. To begin with, whereas the Union's previous requests were confined to "bargaining unit members" (see GC Exh. 9) or "members" (see GC Exh. 13), Paragraph (1) of the July 22 request extended to "employees," which, by virtue of the general nature of the term, obviously extended to unrepresented employees. Of course, to the extent the Union was seeking information related to unrepresented employees, the Union held the burden to prove the relevance. See Disneyland Park, 350 NLRB at 1265. And yet, the General Counsel presented no evidence of any attempt on the part of the Union to satisfy its burden.

Even more problematic was Smith's use of the subjective phrase "affected by." Needless to say, taken alone, represented employees removed from the schedule because of brown outs would be employees "affected by" the brown outs. However, as explained by Schietinger, these employees were frequently reassigned elsewhere on the same schedule, and so, they experienced no change in their hours of work nor did they suffer any reduction in their compensation. See Tr. 341, see also Tr. 253 (Nupp). At the same time, these employees also likely worked with EMTs or paramedics who were not their typical partners. Arguably, all of these employees – those reassigned to different shifts and those working their originally-assigned shifts – were "affected by" the brown outs, insofar as they rode alongside co-workers who were not their regular partners.

The subjective nature of Smith's phraseology generated a lack of clarity in terms of what, precisely, the Union was seeking from the Company, and of course, did not even begin to touch upon the reasons why the Union would be in need of the information. See The Bendix Corp., 242 NLRB 62, 63 (1979) (the Board's role is not "to sift through [an employer's documents] to discern the data to which the union is entitled," rather, the union holds the burden "to indicate with appropriate specificity the relevant information sought"). Regrettably, however, the Union did not pursue any further communication with AMR. See Tr. 150 (Smith). Instead, following receipt of the July 29 response, the Union impetuously

opted for litigation, as the Charge would be filed only a few days later on August 3, 2020. See GC Exh. 1(a).

C.) The June 15 Request for the Company's Response Times

The Union's request for the Company's response times does not directly touch upon represented employees' terms and conditions of employment. Accordingly, the Union held the burden to establish the relevance of the response times. See Disneyland Park, 350 NLRB at 1265. As explained below, the General Counsel did not prove that the Union reasonably believed, based upon objective evidence, that the response times were relevant, nor did the General Counsel establish that the relevance of the response times should have been apparent to the Company under the circumstances.

During the hearing before Your Honor, the General Counsel repeatedly burdened the record with evidence that the Company possessed the response times requested by the Union. In doing so, the General Counsel was dueling a straw man for, as even a cursory review of AMR's responses would show, the Company never denied possession of the response times. Instead, AMR's contention was (and remains) that the call volume requested by the Union was not relevant, and significantly, Smith acknowledged that he never provided the Company with any explanation as to why the Union believed the call volume was relevant. See Tr. 143 – 144. Instead, following the July 17 response where the Company questioned

the relevance of the requested information (see GC Exh. 20), the Union simply parroted the very same demand back to the Company as part of the July 22 request. See GC Exh. 21.

During the course of his testimony, Smith (belatedly) revealed that the Union requested the response times in order to investigate represented employees' response times and ascertain the location of the Bridgeport employees. See Tr. 160 – 161. Beyond the fact that Smith never communicated these reasons to Nupp (see Tr. 163), AMR had no reason to believe that the response times would be of interest to the Union for these reasons. See Tr. 329 (Schietinger). The record does not include any evidence that the Company informed represented employees or the Union of any lack of satisfaction in connection with represented employees' response times. Nor does the record include any evidence that the Company believed Bridgeport crews were more expeditious in their response to the New Haven work.

In sum, the General Counsel has failed to prove why the Union had any need for the Company's response times. Indeed, the record shows that, as of June 15, 2020, the Union was not making use of the information the Company previously provided to the Union, namely the schedules (see Tr. 124), nor does the record show that Smith took advantage of the opportunity to continue a dialog with

Schietinger (see GC Exhs. 12 and 13), who, the evidence clearly demonstrates, always interacted with the Union in good faith.

D.) The May Request for the Company's Call Volume

Like the Union's request for the Company's response times, the Union's request for the Company's call volume does not directly concern represented employees' terms and conditions of employment. Here as well, therefore, the Union held the burden to establish the relevance of the information. See Disneyland Park, 350 NLRB at 1257. However, as before, the General Counsel did not prove that the Union reasonably believed, based upon objective evidence, that the call volume was relevant, nor did the General Counsel establish that the relevance of the call volume should have been apparent to the Company under the circumstances.

In response to the Union's request for the call volume, the Company objected on several grounds, beginning with the fact the request was overly broad. See GC Exh. 12. As elsewhere, as part of his testimony, Smith essentially conceded the validity of the Company's objection. In particular, Smith acknowledged that, of the Company's four Divisions, New Haven was the only Division of any interest to the Union. See Tr. 131. And yet, as communicated by the May request along with the June 10 request, the Union generally sought "[d]ata of call volume." See GC Exhs. 9, 13. Ultimately, as part of the July 22 request,

Smith finally narrowed the request to "[d]ata of AMR New Haven call volume" (see GC Exh. 21), and yet, a more fundamental problem remained in connection with the utter lack of relevance the call volume would have for any of the Company's Divisions.

As confirmed by Smith's testimony, the Union's only attempt to explain the relevance of the call volume was set forth by the June 10 request. See Tr. 137 – 139. There, Smith offered only the following conclusory declaration of relevance:

> The information is relevant to the ongoing union investigation into non-bargaining unit AMR employees performing bargaining unit work in the New Haven coverage area on a frequent basis during the brown outs.

See GC Exh. 13.

The June 10 request did not include any explanation as to ***why*** the call volume would be necessary for the Union's investigation. See Disneyland Park, 350 NLRB at 1258, fn. 5 (a "generalized, conclusory explanation is insufficient to trigger an obligation to supply information"). Nor does the record provide any reason to infer that the Union's need for the information should have been evident to the Company. The record does not show that any previous disagreement existed between the parties in terms of the fact that, for a period of time, the Company's volume in New Haven dropped below ordinary levels. In fact, as part of the e-mail that Montanaro sent to Schietinger on May 2, 2020, Montanaro stated: "[t]he union realizes that the call volume is reduced at this time . . ." See GC Exh. 7. The

record also shows that the Company provided the Union with updates on the restoration of the Company's ordinary volume in New Haven. See R Exhs. 6 – 7. Accordingly, the Union was hardly kept in the dark in terms of the changes that were taking place in connection with the call volume and the Union never expressed to the Company any doubt in terms of the accuracy of the Company's representations related to the call volume.

Even more importantly, the Union never contended that the volume reductions were related to any possible violation of the Agreement. In May and June of 2020, the Union's information requests only alluded to ***"concerns"*** (see GC Exhs. 9 and 14 [emphasis added]) and no mention was made of any Article of the Agreement the Union believed the Company may have violated. See Disneyland Park, 350 NLRB at 1259 (for information that is not presumptively relevant, "the union must claim that a specific provision of the contract is being breached and must set forth at least some facts to support that claim"). Indeed, as part of the same May 2, 2020 e-mail referenced above, Montanaro alluded to the fact represented employees had been removed from the schedule due to the volume reduction and shared the Union's realization that ***"these steps may be necessary to maintain proper business."*** See GC Exh. 7 (emphasis added). Moreover, when the Union did come forward with the 2020 Grievance and formally allege a violation of the Agreement, the Union did not include any challenge to the removal

of any represented employee from the schedule on account of the volume reduction. See Tr. 213 (Montanaro).

Even under the presumption, solely for the sake of argument, the Union had a genuine need for the call volume, the Company appropriately raised a concern as to the proprietary nature of the information. As explained by Schietinger, disclosure of AMR's call volume to a competitor would be of strategic value to the competitor. See Tr. 302 – 304. Accordingly, AMR authorizes very few employees to even access the Company's call volume. Id. Indeed, the sensitivity of the call volume is so great that AMR pursues work from public customers by use of a "short form" application, which does not require any comprehensive disclosure of call volume, but does require the Company to waive any rights to negotiate rate increases beyond a fixed percentage. Id. Put a different way, AMR has made the choice to forego the opportunity for higher revenue in exchange for guaranteed restrictions on disclosure of the Company's call volume.[7]

[7] The record does not include any evidence that the parties bargained over the Company's confidentiality concern. Accordingly, should Your Honor disagree with the Company's position and conclude the call volume is necessary for the Union's representation of the employees, the appropriate remedy would not be an Oder compelling disclosure of the call volume to the Union. Instead, the appropriate remedy would be an Order compelling the parties to bargain over an accommodation between the Union's rights to access the information and the Company's rights to maintain the confidentiality of the information. See Metropolitan Edison Company, 330 NLRB 107, 109 (1999).

E.) The May Request for the Amount of New Haven Work Performed by Bridgeport Employees

Like the Union's requests for the Company's response times and call volume, the Union's request for the number of New Haven calls assigned to Bridgeport crews is not presumptively relevant. See Disneyland Park, 350 NLRB at 1265 (an alleged subcontracting arrangement, even one relating to represented employees' terms and conditions of employment, does not constitute presumptively relevant information). Thus, once more, the Union held the burden to demonstrate the relevance of the requested information. Here too, however, the General Counsel did not prove that the Union reasonably believed, based upon objective evidence, that the requested information was relevant, nor did the General Counsel establish that the relevance of the information should have been apparent to the Company under the circumstances.

As explained by Schietinger, during his tenure as the Regional Director, Bridgeport employees have routinely performed work in New Haven. See Tr. 290 – 291. Indeed, as explained by Montanaro, the 2019 Grievance was not prompted by the mere presence of Bridgeport employees in New Haven, but rather, by the Union's observation of an increase in the number of Bridgeport employees performing work in New Haven. See Tr. 175. Similarly, the 2019 Grievance was resolved based upon the understanding that Bridgeport employees would not be prescheduled for New Haven work, as opposed to an agreement that Bridgeport

employees would steer clear of New Haven altogether. See 47 (Smith), Tr. 179 (Montanaro), Tr. 288 (Schietinger).

In late April 2020, according to his testimony, Montanaro observed a relatively slight increase in the number of Bridgeport crews in New Haven. See Tr. 179 – 180, 185 – 186. Montanaro explained he was able to distinguish Bridgeport crews from New Haven crews on the basis of unique "call signals" that appeared on the vehicles used by the Bridgeport crews. See Tr. 175. Montanaro also testified that he heard the call signals referenced as part of radio chatter from the Company's dispatchers. Id. However, while the call signals allowed Montanaro to identify a Bridgeport crew, the signals would not have shed any light in terms of ***why*** the crew was in New Haven. See Tr. 259 (Schietinger). On the occasions where Montanaro spoke with Bridgeport crews to ascertain the reason for their appearance in New Haven, the employees consistently advised they had not been scheduled to work in New Haven, but rather, traveled to the city in order to help the New Haven employees. See Tr. 183 – 184. Likely by no coincidence, therefore, the e-mail that Montanaro sent to Schietinger on May 2, 2020 includes no complaints as to Bridgeport crews performing New Haven work. See GC Exh. 7.

To be sure, two days later, Montanaro informed Schietinger *via* e-mail that "I have now heard Bridgeport division cars signing on to assist with the over

abundance of calls that New Haven is facing." See GC Exh. 8. Less than thirty minutes later, Schietinger responded, informing Montanaro there was one (and only one) Bridgeport crew in New Haven and they were in the area to drop off a patient at a New Haven facility. Id. Thereafter, to the extent any serious concern remained for Montanaro in connection with the Company's use of Bridgeport crews, the signs of the concern quickly faded over time. As part of their meeting on May 6, 2020, Montanaro informed Schietinger of a number of concerns, which, admittedly, included a concern related to the Bridgeport crews working in New Haven. See Tr. 193 – 194. However, when Schietinger put the general question to Montanaro, "well, what do you want me to do about it," Montanaro responded as follows: "[p]lease put the hours back so our crews can start working again." See Tr. 194. Montanaro made no request in terms of any change to the Bridgeport crews' performance of New Haven work. Similarly, on May 18, 2020, Montanaro sent Schietinger an e-mail in which he expressed a variety of concerns, but nowhere in the communication is there any trace of a concern related to the Company's use of the Bridgeport crews. See R. Exh. 6. The record hardly portrays Montanaro as a shrinking violet. To the contrary, Montanaro repeatedly raised concerns with Schietinger. Accordingly, to the extent the Union truly maintained any concerns over the Company's assignment of Bridgeport crews, surely there would be evidence of Montanaro expressing some form of an ongoing

protest to Schietinger. And yet, May 6, 2020, the day of Montanaro's meeting with Schietinger, is the stopping point of any such evidence.

Nevertheless, on June 10, 2020, Smith revealed to the Company that the Union was conducting an "ongoing'" investigation of Bridgeport crews performing New Haven work during a period of "continued" brown outs for the represented employees. See GC Exh. 13. Significantly, while the June 10 request suggested that AMR continued to engage in conduct that was of concern to the Union, the General Counsel did not offer any evidence of what relevant events, if any, were actually taking place from late May to late July of 2020.[8] The General Counsel did not, for example, offer any evidence as to the frequency with which Bridgeport crews appeared in New Haven between late May and late July of 2020, let alone the reasons why these crews appeared in New Haven during that period of time. The evidentiary void is especially glaring in connection with the 2020 Grievance, which, according to the document anyway, was based upon events that occurred on July 7 and 8, 2020. See GC Exh. 16 ("Date of Event[s] causing Grievance: 07/07/2020 – 07/08/2020"). The General Counsel simply offered no evidence as to

[8] Though the Union represents 425 employees (see Tr. 169), a sizable witness pool to say the least, the only evidence adduced by the General Counsel on the Company's use of Bridgeport crews for New Haven work came from Montanaro, whose testimony was generally confined to April of 2020. See Tr. 179 – 180.

what occurred on these dates.[9] Given the fact no evidence was offered to prove the existence of the alleged events underlying the Grievance, let alone the nature of these alleged events, the General Counsel is effectively paralyzed from making out any case of relevance, inclusive of the contention that the requested information was needed in order for the Union to investigate or process the 2020 Grievance.

Even under the assumption, solely for the sake of argument, the General Counsel somehow managed to develop a sufficient record of the relevant events, AMR had no reason to believe the amount of New Haven work assigned to Bridgeport crews was relevant. The Company obviously knew that the Union was able to investigate, file and resolve the 2019 Grievance without obtaining ***any*** information from the Company. See Tr. 121 – 123 (Smith), Tr. 208 – 209 (Montanaro). Both Smith and Montanaro agreed that the allegations set forth by the 2020 Grievance were substantially the same as the allegations previously set forth by the 2019 Grievance. See Tr. 120 - 121 (Smith), Tr. 209 (Montanaro). Why, suddenly, the Union would now have a need for the requested information

[9] Incidentally, contrary to the allegations set forth by the 2020 Grievance, the record suggests that represented employees did not remain off the schedule as of early July of 2020. Aside from Schietinger's e-mails of May 6 and May 18, 2020, where he noted the continued return of represented employees to the schedule (see R. Exhs. 6 – 7), Schietinger stated he ultimately "added on hours back beyond what was originally on the schedule." See Tr. 341 – 342.

would have been a mystery to any employer in these circumstances.[10] The Union's one and only attempt to explain the relevance of the information came from the June 10 request (see Tr. 138 – 139), where, as discussed above, Smith simply offered the conclusory declaration that the information was relevant to an investigation. Given the lack of any true explanation by the Union, and in light of the Company's knowledge base at the time, there was no self-evident relevancy associated with the Union's request for the amount of New Haven work performed by Bridgeport employees. Any previous disagreement between the parties on the Company's use of Bridgeport crews related to why the employees were performing work in New Haven, not the sheer size of Bridgeport employees in the area, and according to Schietinger's uncontroverted testimony (see Tr. 293, 311, 332), Bridgeport crews were not being prescheduled for any work in New Haven.[11]

Lastly, and perhaps most importantly, the General Counsel's case ignores an elephant in the room, which is the fact that, before any controversy arose between

[10] The form used for the 2020 Grievance called upon the Union to identify the information and documentation that the Union believed was necessary for the processing of the Grievance. See GC Exhs 16 and 19. However, ironically enough, the Union did not identify any such information or documentation, proving that sometimes silence really does speak volumes.

[11] The fact the Union had no genuine need for the requested information is also supported by the fact that the Union sought substantially the same information from the Company's Waterbury Division and, in spite of receiving substantially the same responses and objections, the Union did not pursue any Unfair Labor Practice Charge against the Waterbury Division. See Tr. 124 – 126 (Smith).

the parties in 2020, AMR invoked its rights under Article 23.03 of the Agreement. In preparation for the hearing before Your Honor, AMR served the Union with a Subpoena *Duces Tecum*, where, in relevant part, the Company sought:

> "[a]ny and all documents that show, refer or relate to any notice that the Union received on or about March 16, 2020 to the effect the Company had invoked the 'Disaster' provisions of the Agreement."
>
> See R. Exh. 4, page 6.

In response to the Subpoena, the Union produced the March 16, 2020 notice in which the Company set forth its position that, by virtue of the notice, the Company "would be temporarily relieved of obligations under the [Agreement] relating to certain matters including scheduling and shift changes," and similarly, permitted "to modify work schedules, work times and other daily working conditions . . ." See R. Exh. 4, pages 8 – 9. Following the Union's receipt of the notice, the parties' representatives exchanged communications related to the notice, and as part of these communications, the Union did not express any disagreement with the rights the Company claimed under the circumstances. Id., pages 13 – 15. In addition, sometime in May of 2020, Schietinger essentially informed Montanaro or Smith that he believed Article 23.03 of the Agreement authorized the Company to disregard seniority in connection with the removal of

represented employees from the schedule. See Tr. 296 – 298.[12] As part of the July 17 response, Nupp also referred the Union to Article 23.03 of the Agreement not to mention Article 4.01 – Management Rights as well. See GC Exh. 20. The record does not include any evidence that the Union expressed any disagreement to Schietinger or Nupp in terms of the sweeping power and effect of the Company's notice. See Tr. 143 (Smith). In summary, because the Agreement granted the Company the right to take actions unilaterally, the Union's request for the amount of New Haven work assigned to Bridgeport employees – and indeed, all of the Union's other requests – could not be relevant as a matter of law. See ADT, LLC d/b/a ADT Security Services, 369 NLRB No. 31, slip op. at 1 and fn. 2 (2020).

CONCLUSION

For all the reasons set forth above, Your Honor should dismiss the Complaint in its entirety.

Dated: Glastonbury, Connecticut
March 10, 2021

Respectfully submitted,

/s/_____

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[12] The General Counsel did not refute Schietinger's testimony by calling Smith or Montanaro as witnesses on rebuttal.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC.	:	
	:	Case No. 01-CA-263985
versus	:	
INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS LOCAL R1-999, NAGE / SEIU LOCAL 5000	:	

CERTIFICATE OF SERVICE

The Undersigned, Bryan T. Carmody, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on March 10, 2021, the Respondent's Post-Hearing Brief was served upon the following *via* email:

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Dated: Glastonbury, Connecticut
March 10, 2021

Respectfully submitted,

/s/_____

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